IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 443 of 2000

Between:

K.Sambasiva Rao S/o.Veeraiah,

Aged 42 years,
R/o: D.No.8-5-35, Varavakatta,
Narasaraopet Guntur District.

..... PETITIONER

AND

1. The High Court of A.P., Hyderabad, rep. by its Registrar
2. The District Judge, Guntur

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ declaring the proceedings of the District Judge, Guntur vide Office Order No.Dis.927, Dt.30/01/1999 imposing the punishment of

compulsory retirement from service and the consequential appellate authority order Roc.No.54/99, C.II/1, Dt.22/09/1999 is illegal and arbitrary and consequently set aside the same (ii) direct the respondent to reinstate the petitioner into service with all consequential benefits.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: MR.C.V.NAGARJUNA REDDY, STANDING COUNSEL FOR APHC.

The Court made the following :

ORAL ORDER:

(Per Hon'ble The Chief Justice)

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1 . Petitioner was compulsorily retired from service pursuant to the departmental proceedings initiated against him. Departmental appeal was dismissed. The said order is under challenge in this writ petition.

2 . As a matter of fact, the learned counsel for the petitioner submits that on appreciation of evidence adduced before the Enquiry Officer, it cannot be said that charges are proved. In other words, learned counsel would submit that evidence adduced before the Enquiry Officer has to be re-appreciated in arriving at the conclusion since the case property, namely, cash of Rs.8,900/- was not deposited with the petitioner on 17-01-1998 by Shaikh China Subhani, Court Constable, in Crime No.121 of 1996 of Savalyapuram P.S., in which charge sheet was submitted on 16-01-1998.

3 . Arguments have been addressed as if we are sitting in appeal over the orders passed by the disciplinary authority as well as by the appellate authority, which is not permissible to do so while hearing the writ petition. Scope of writ petition is limited and within that limit, we do not think it a fit case to interfere since the view taken by the disciplinary authority is the plausible view which can be taken on the material on record.

4. Charge framed against the petitioner was that on
16-01-1998 charge-sheet was submitted by Constable in Cr.No.121 of 1996 along with the case property, being cash of Rs.8,900/-.

The Magistrate endorsed as ‘check and put up‘ and also on the property form as ‘check and receive’. The Constable approached the petitioner, who asked the Constable that the property box was not brought from the treasury office and, therefore, he told the Constable to produce the same on the next day. Accordingly, on 17-01-1998 Constable brought the property between 12.00 noon and 01.00 p.m., and it was received by the petitioner, but petitioner did not account for the same. Actually it was on 17-01-1998, petitioner accounted for the cash. Defence of the petitioner was that cash, in fact, was not handed over on 17-01-1998, but was handed over on 23-01-1998 at about 04.30 P.M., and he had approached the Presiding Officer and as there was no cash box available, the Presiding Officer asked him to keep it with him and deposit the same on the next working day. Petitioner’s case is that he fell ill and could not come to the Court for the next two days. On

26-01-1998, being holiday as Republic Day, he handed over the cash to the Magistrate on 27-01-1998. This version was not accepted by the Enquiry Officer in view of the categorical statements of the Presiding Officer, who appeared as PW-5, and also PW.1, Constable and PW-4, an Advocate. The Enquiry Officer, on material produced before him, duly examined pros and cons of the defence as also the evidence of material witnesses. Statement of PW-5 does not support the delinquent and

PW-1, Constable asserts that it was on 17-01-1998, he handed over cash to the petitioner. According to PW-5, on 22-01-1998 Sri P.Saida Rao had filed an application under Section 457 of Cr.P.C for return of the case property. He made, thereupon, an endorsement “check and put up”. It was not put up before him on the same day. It was called on the Bench on 23-01-1998 for hearing and he found the office note on the petition as if the property is available in the box. Note was prepared by the petitioner. He, thus, summoned the petitioner to the court and questioned him as to why he had put up note though the property was not received by him and not kept in the box, and to the query of the Enquiry Officer, the petitioner represented that he had received the case property from PW-1 and to bring the same, the petitioner, thereafter, went to the office. The petitioner did not turn up with the case property. Court time was over at 05.20 p.m. He got down from the Bench and was sitting in the Chamber and was waiting for the explanation of the petitioner as to why he had put up a wrong note. At about 05.30 p.m., PWs.2 and 3 came to his Chamber for signature and they informed

PW-5 that petitioner had left the court premises. He, thus, telephoned the District Judge at 05.30 p.m., who instructed PW-5 to record the statements of PWs.1 to 3. PW-1 was not available. Statements of PWs.2 and 3 were recorded, and on 27-02-1998, petitioner did not attend the Court. On 27-01-1998 at 12.15 p.m., petitioner deposited the cash and he kept the property in cash box and sent to the treasury.

5 . In view of this evidence on record, defence of the petitioner was not only disbelieved, but also found to be false. Thus, petitioner was found to be guilty of charges, and compulsory retirement was rightly imposed, which is commensurate with the charges proved. We see no interference is called for. Accordingly, writ petition is dismissed. No costs.

_____ DEVINDER GUPTA, C.J.,

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C.V.RAMULU, J.,

Dated: 26.08.2004.

LRKM.

To

1. The Registrar (Administration), High Court of A.P., Hyderabad,
2. The District Judge, Guntur

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